

Title 8 CFR, Section 204.3 - Orphans.

[Section 204.3 Orphans](#)

[Sections of Law and Regulations Relating to Orphan Petition](#)

[Glossary/Definitions](#)

[Forms Used in Orphan Cases](#)

[Links to Useful Websites](#)

[Sections of the Immigration and Nationality Act](#)

[Sections of Regulations in the Code of Federal Regulations](#)

Sec. 204.3 Orphans.

(Revised 8/1/94; 59 FR 38876 - 38889)

(a) General.

(1) Background. This regulation addresses a number of issues that have arisen in the recent past because of the increased interest by United States citizens in the adoption of foreign-born orphans and is based on applicable provisions of the Act. It should be noted that this regulation was not drafted in connection with possible United States ratification and implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption.

(2) Overview. The processing and adjudication of orphan cases is a Service priority. A child who meets the definition of orphan contained in section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a United States citizen. Petitioning for an orphan involves two distinct determinations. The first determination concerns the advanced processing application which focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study and fingerprint checks, is essential for the protection of the orphan. The second determination concerns the orphan petition which focuses on whether the child is an orphan under section 101(b)(1)(F) of the Act. The prospective adoptive parents may submit the documentation necessary for each of these determinations separately or at one time, depending on when the orphan is identified. An orphan petition cannot be approved unless there is a favorable determination on the advanced processing application. However, a favorable determination on the advanced processing application does not guarantee that the orphan petition will be approved. Prospective adoptive parents may consult with the local Service office on matters relating to an advanced processing application and/or orphan petition.

(b) Definitions. As used in this section, the term:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the

third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

Adult member of the prospective adoptive parents' household means an individual, other than a prospective adoptive parent, over the age of 18 whose principal or only residence is the home of the prospective adoptive parents. This definition excludes any child of the prospective adoptive parents, whose principal or only residence is the home of the prospective adoptive parents, who reaches his or her eighteenth birthday after the prospective adoptive parents have filed the advanced processing application (or the advanced processing application concurrently with the orphan petition) unless the director has an articulable and substantive reason for requiring an evaluation by a home study preparer and/or a fingerprint check.

Advanced processing application means Form I-600A (Application for Advanced Processing of Orphan Petition) completed in accordance with the form's instructions and submitted with the required supporting documentation and the fee as required in 8 CFR 103.7(b)(1). The application must be signed in accordance with the form's instructions by the married petitioner and spouse, or by the unmarried petitioner.

Application is synonymous with advanced processing application.

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

Home study preparer means any party licensed or otherwise authorized under the law of the State of the orphan's proposed residence to conduct the research and preparation for a home study, including the required personal interview(s). This term includes a public agency with authority under that State's law in adoption matters, public or private adoption agencies licensed or otherwise authorized by the laws of that State to place children for adoption, and organizations or individuals licensed or otherwise authorized to conduct the research and preparation for a home study, including the required personal interview(s), under the laws of the State of the orphan's proposed residence. In the case of an orphan whose adoption has been finalized abroad and whose adoptive parents reside abroad, the home study preparer includes any party licensed or otherwise authorized to conduct home studies under the law of any State of the United States, or any party licensed or otherwise authorized by the foreign country's adoption authorities to conduct home studies under the laws of the foreign country.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Orphan petition means Form I-600 (Petition to Classify Orphan as an Immediate Relative). The petition must be completed in accordance with the form's instructions and submitted with the required supporting documentation and, if there is not an advanced processing application approved within the previous 18 months or pending, the fee as required in 8 CFR 103.7(b)(1). The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

Overseas site means the Department of State immigrant visa-issuing post having jurisdiction over the orphan's residence, or in foreign countries in which the Service has an office or offices, the Service office having jurisdiction over the orphan's residence.

Petition is synonymous with orphan petition.

Petitioner means a married United States citizen of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. In the case of a married couple, both of whom are United States citizens, either party may be the petitioner.

Prospective adoptive parents means a married United States citizen of any age and his or her spouse of any age, or an unmarried United States citizen who is at least 24 years old at the time he or she files the advanced processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the United States citizen may be a citizen or an alien. An alien spouse must be in lawful immigration status if residing in the United States.

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

(c) Supporting documentation for an advanced processing application. The prospective adoptive parents may file an advanced processing application before an orphan is identified in order to secure the necessary clearance to file the orphan petition. Any document not in the English language must be accompanied by a certified English translation.

(1) Required supporting documentation that must accompany the advanced processing application. The following supporting documentation must accompany an advanced processing application at the time of filing:

(i) Evidence of the petitioner's United States citizenship as set forth in Sec. 204.1(g) and, if the petitioner is married and the married couple is residing in the United States, evidence of the spouse's United States citizenship or lawful immigration status;

(ii) A copy of the petitioner's marriage certificate to his or her spouse, if the petitioner is currently married;

(iii) Evidence of legal termination of all previous marriages for the petitioner and/or spouse, if previously married; and (Amended effective 3/29/98; 63 FR 12979)

(iv) Evidence of compliance with preadoption requirements, if any, of the State of the orphan's proposed residence in cases where it is known that there will be no adoption abroad, or that both members of the married prospective adoptive couple or the unmarried prospective adoptive parent will not personally see the child prior to, or during, the adoption abroad, and/or that the adoption abroad will not be full and final. Any preadoption requirements which cannot be met at the time the advanced processing application is filed because of operation of State law must be noted and explained when the application is filed. Preadoption requirements must be met at the time the petition is filed, except for those which cannot be met until the orphan arrives in the United States; and (Redesignated as (c)(1)(iv) effective 3/29/98, previously (c)(1)(v); 63 FR 12979)

(2) Home study. The home study must comply with the requirements contained in paragraph (e) of this section. If the home study is not submitted when the advanced processing application is filed, it must be submitted within one year of the filing date of the advanced processing application, or the application will be denied pursuant to paragraph (h)(5) of this section.

(3) After receipt of a properly filed advanced processing application, the Service will fingerprint each member of the married prospective adoptive couple or the unmarried prospective adoptive parent, as prescribed in § 103.2(e) of this chapter. The Service will also fingerprint each additional adult member of the prospective adoptive parents' household, as prescribed in § 103.2(e) of this chapter. The Service may waive the requirement that each additional adult member of the prospective adoptive parents' household be fingerprinted when it determines that such adult is physically unable to be fingerprinted because of age or medical condition. (Paragraph (c)(3) added effective 3/29/98; 63 FR 12979)

(d) Supporting documentation for a petition for an identified orphan. Any document not in the English language must be accompanied by a certified English translation. If an orphan has been identified for adoption and the advanced processing application is pending, the prospective adoptive parents may file the orphan petition at the Service office where the application is pending. The prospective adoptive parents who have an approved advanced processing

application must file an orphan petition and all supporting documents within eighteen months of the date of the approval of the advanced processing application. If the prospective adoptive parents fail to file the orphan petition within the eighteen-month period, the advanced processing application shall be deemed abandoned pursuant to paragraph (h)(7) of this section. If the prospective adoptive parents file the orphan petition after the eighteen-month period, the petition shall be denied pursuant to paragraph (h)(13) of this section. Prospective adoptive parents who do not have an advanced processing application approved or pending may file the application and petition concurrently on one Form I-600 if they have identified an orphan for adoption. An orphan petition must be accompanied by full documentation as follows:

(1) Filing an orphan petition after the advanced processing application has been approved. The following supporting documentation must accompany an orphan petition filed after approval of the advanced processing application:

(i) Evidence of approval of the advanced processing application;

(ii) The orphan's birth certificate, or if such a certificate is not available, an explanation together with other proof of identity and age;

(iii) Evidence that the child is an orphan as appropriate to the case:

(A) Evidence that the orphan has been abandoned or deserted by, separated or lost from both parents, or that both parents have disappeared as those terms are defined in paragraph (b) of this section; or

(B) The death certificate(s) of the orphan's parent(s), if applicable; or

(C) If the orphan has only a sole or surviving parent, as defined in paragraph (b) of this section, evidence of this fact and evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption; and

(iv) Evidence of adoption abroad or that the prospective adoptive parents have, or a person or entity working on their behalf has custody of the orphan for emigration and adoption in accordance with the laws of the foreign-sending country:

(A) A legible, certified copy of the adoption decree, if the orphan has been the subject of a full and final adoption abroad, and evidence that the unmarried petitioner, or married petitioner and spouse, saw the orphan prior to or during the adoption proceeding abroad; or

(B) If the orphan is to be adopted in the United States because there was no adoption abroad, or the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final:

(1) Evidence that the prospective adoptive parents have, or a person or entity working on their behalf has, secured custody of the orphan in accordance with the laws of the foreign-sending country;

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority

which had the immediately previous legal custody or control over the orphan if the adoption was not full and final under the laws of the foreign-sending country;

(3) Evidence of compliance with all preadoption requirements, if any, of the State of the orphan's proposed residence. (Any such requirements that cannot be complied with prior to the orphan's arrival in the United States because of State law must be noted and explained); and

(4) Evidence that the State of the orphan's proposed residence allows readoption or provides for judicial recognition of the adoption abroad if there was an adoption abroad which does not meet statutory requirements pursuant to section 101(b)(1)(F) of the Act, because the unmarried petitioner, or married petitioner and spouse, did not personally see the orphan prior to or during the adoption proceeding abroad, and/or the adoption abroad was not full and final.

(2) Filing an orphan petition while the advanced processing application is pending. An orphan petition filed while an advanced processing application is pending must be filed at the Service office where the application is pending. The following supporting documentation must accompany an orphan petition filed while the advanced processing application is pending:

(i) A photocopy of the fee receipt relating to the advanced processing application, or if not available, other evidence that the advanced processing application has been filed, such as a statement including the date when the application was filed;

(ii) The home study, if not already submitted; and

(iii) The supporting documentation for an orphan petition required in paragraph (d)(1) of this section, except for paragraph (d)(1)(i) of this section.

(3) Filing an orphan petition concurrently with the advanced processing application. A petition filed concurrently with the advanced processing application must be submitted on Form I-600, completed and signed in accordance with the form's instructions. (Under this concurrent procedure, Form I-600 serves as both the Forms I-600A and I-600, and the prospective adoptive parents should not file a separate Form I-600A.) The following supporting documentation must accompany a petition filed concurrently with the application under this provision:

(i) The supporting documentation for an advanced processing application required in paragraph (c) of this section; and

(ii) The supporting documentation for an orphan petition required in paragraph (d)(1) of this section, except for paragraph (d)(1)(i) of this section.

(e) Home study requirements. For immigration purposes, a home study is a process for screening and preparing prospective adoptive parents who are interested in adopting an orphan from another country. The home study should be tailored to the particular situation of the prospective adoptive parents: for example, a family which previously has adopted children will require different preparation than a family that has no adopted children. If there are any additional adult members of the prospective adoptive parents' household, the home study must address this fact. The home study preparer must interview any additional adult member of the prospective adoptive

parents' household and assess him or her in light of the requirements of paragraphs (e)(1), (e)(2)(i), (iii), (iv), and (v) of this section. A home study must be conducted by a home study preparer, as defined in paragraph (b) of this section. The home study, or the most recent update to the home study, must not be more than six months old at the time the home study is submitted to the Service. Only one copy of the home study must be submitted to the Service. Ordinarily, a home study (or a home study and update as discussed above) will not have to be updated after it has been submitted to the Service unless there is a significant change in the household of the prospective adoptive parents such as a change in residence, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family prior to the orphan's immigration into the United States. In addition to meeting any State, professional, or agency requirements, a home study must include the following:

(1) Personal interview(s) and home visit(s). The home study preparer must conduct at least one interview in person, and at least one home visit, with the prospective adoptive couple or the unmarried prospective adoptive parent. Each additional adult member of the prospective adoptive parents' household must also be interviewed in person at least once. The home study report must state the number of such interviews and visits, and must specify any other contacts with the prospective adoptive parents and any adult member of the prospective adoptive parents' household.

(2) Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan. The home study must include a discussion of the following areas:

(i) Assessment of the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. The home study preparer must make an initial assessment of how the physical, mental, and emotional health of the prospective adoptive parents would affect their ability to properly care for the prospective orphan. If the home study preparer determines that there are areas beyond his or her expertise which need to be addressed, he or she shall refer the prospective adoptive parents to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, or clinical social worker for an evaluation. Some problems may not necessarily disqualify applicants. For example, certain physical limitations may indicate which categories of children may be most appropriately placed with certain prospective adoptive parents. Certain mental and emotional health problems may be successfully treated. The home study must include the home study preparer's assessment of any such potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(ii) Assessment of the finances of the prospective adoptive parents. The financial assessment must include a description of the income, financial resources, debts, and expenses of the prospective adoptive parents. A statement concerning the evidence that was considered to verify the source and amount of income and financial resources must be included. Any income designated for the support of one or more children in the care and custody of the prospective adoptive parents, such as funds for foster care, or any income designated for the support of another member of the household must not be counted towards the financial resources available for the support of a prospective orphan. The Service will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, the Service reserves the right to ask for such detailed documentation.

(iii) History of abuse and/or violence.

(A) Screening for abuse and violence.

(1) Checking available child abuse registries. The home study preparer must ensure that a check of each prospective adoptive parent and each adult member of the prospective adoptive parents' household has been made with available child abuse registries and must include in the home study the results of the checks including, if applicable, a report that no record was found to exist. Depending on the access allowed by the state of proposed residence of the orphan, the home study preparer must take one of the following courses of action:

(i) If the home study preparer is allowed access to information from the child abuse registries, he or she shall make the appropriate checks for each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household;

(ii) If the State requires the home study preparer to secure permission from each of the prospective adoptive parents and for each adult member of the prospective adoptive parents' household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals, and make the appropriate checks;

(iii) If the State will only release information directly to each of the prospective adoptive parents and directly to the adult member of the prospective adoptive parents' household, those individuals must secure such information and provide it to the home study preparer. The home study preparer must include the results of these checks in the home study;

(iv) If the State will not release information to either the home study preparer or the prospective adoptive parents and the adult members of the prospective adoptive parents' household, this must be noted in the home study; or

(v) If the State does not have a child abuse registry, this must be noted in the home study.

(2) Inquiring about abuse and violence. The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse, sexual or child abuse, or domestic violence, even if it did not result in an arrest or conviction. The home study preparer must include each prospective adoptive parent's response to the questions regarding abuse and violence. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(B) Information concerning history of abuse and/or violence. If the petitioner and/or spouse, if married, disclose(s) any history of abuse

and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse, sexual or child abuse, and/or domestic violence and the date of each occurrence. A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study. Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. The home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(C) Evidence of rehabilitation. If a prospective adoptive parent has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation. In such a case, a discussion of such rehabilitation which demonstrates that the prospective adoptive parent is and will be able to provide proper care for the orphan must be included in the home study. Evidence of rehabilitation may include an evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, and any type of counseling or rehabilitation programs which have been successfully completed. Evidence of rehabilitation may also be provided by an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker. The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent. Additionally, if any adult member of the prospective adoptive parents' household has a history of substance abuse, sexual or child abuse, and/or domestic violence, the home study preparer must apply the requirements of this paragraph to that adult member of the prospective adoptive parents' household.

(D) Failure to disclose or cooperate. Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to the home study preparer and to the Service, may result in the denial of the advanced processing application or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section. Failure by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to cooperate in having available child abuse registries checked in accordance with paragraphs (e)(2)(iii)(A)(1) and (e)(2)(iii)(A)(1)(i) through (e)(2)(iii)(A)(1)(iii) of this section will result in the denial of the advanced processing application or, if applicable, the application and orphan petition, pursuant to paragraph (h)(4) of this section.

(iv) Previous rejection for adoption or prior unfavorable home study. The home study preparer must ask each prospective adoptive parent whether he or she previously has been rejected as a prospective adoptive parent or has been the

subject of an unfavorable home study, and must include each prospective adoptive parent's response to this question in the home study report. If a prospective adoptive parent previously has been rejected or found to be unsuitable, the reasons for such a finding must be set forth as well as the reason(s) why he or she is now being favorably considered as a prospective adoptive parent. A copy of each previous rejection and/or unfavorable home study must be attached to the favorable home study. Additionally, the home study preparer must apply the requirements of this paragraph to each adult member of the prospective adoptive parents' household.

(v) Criminal history. The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and the Service any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and the Service the opportunity to properly evaluate the criminal record in light of such evidence. When such information is not presented early in the process, it comes to light when the fingerprint checks are received by the Service. By that time, the prospective adoptive parents are usually well into preadoption proceedings of identifying a child and may even have firm travel plans. At times, the travel plans have to be rescheduled while the issues raised by the criminal record are addressed. It is in the best interest of all parties to have any criminal records disclosed and resolved early in the process.

(3) Living accommodations. The home study must include a detailed description of the living accommodations where the prospective adoptive parents currently reside. If the prospective adoptive parents are planning to move, the home study must include a description of the living accommodations where the child will reside with the prospective adoptive parents, if known. If the prospective adoptive parents are residing abroad at the time of the home study, the home study must include a description of the living accommodations where the child will reside in the United States with the prospective adoptive parents, if known. Each description must include an assessment of the suitability of accommodations for a child and a determination whether such space meets applicable State requirements, if any.

(4) Handicapped or special needs orphan. A home study conducted in conjunction with the proposed adoption of a special needs or handicapped orphan must contain a discussion of the prospective adoptive parents' preparation, willingness, and ability to provide proper care for such an orphan.

(5) Summary of the counseling given and plans for post-placement counseling. The home study must include a summary of the counseling given to prepare the prospective adoptive parents for an international adoption and any plans for post-placement counseling. Such preadoption counseling must include a discussion of the processing, expenses, difficulties, and delays associated with international adoptions.

(6) Specific approval of the prospective adoptive parents for adoption. If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the prospective adoptive parents for adoption and a discussion of the reasons for such approval. The home study must include the number of orphans which the prospective adoptive parents may adopt. The home study must state whether there are any specific restrictions to the adoption such as nationality, age, or gender of the orphan. If the home study preparer has approved the prospective adoptive parents for a handicapped or special needs adoption, this fact must be clearly stated.

(7) Home study preparer's certification and statement of authority to conduct home studies. The home study must include a statement in which the home study preparer certifies that he or she is licensed or otherwise authorized by the State of the orphan's proposed residence to research and prepare home studies. In the case of an orphan whose adoption was finalized abroad and whose adoptive parents reside abroad, the home study preparer must certify that he or she is licensed or otherwise authorized to conduct home studies under the law of any State of the United States, or authorized by the adoption authorities of the foreign country to conduct home studies under the laws of the foreign country. In every case, this statement must cite the State or country under whose authority the home study preparer is licensed or authorized, the specific law or regulation authorizing the preparer to conduct home studies, the license number, if any, and the expiration date, if any, of this authorization or license.

(8) Review of home study. If the prospective adoptive parents reside in a State which requires the State to review the home study, such a review must occur and be documented before the home study is submitted to the Service. If the prospective adoptive parents reside abroad, an appropriate public or private adoption agency licensed, or otherwise authorized, by any State of the United States to place children for adoption, must review and favorably recommend the home study before it is submitted to the Service.

(9) Home study updates and amendments.

(i) Updates. If the home study is more than six months old at the time it would be submitted to the Service, the prospective adoptive parents must ensure that it is updated by a home study preparer before it is submitted to the Service. Each update must include screening in accordance with paragraphs (e)(2)(iii)(A) and (B) of this section.

(ii) Amendments. If there have been any significant changes, such as a change in the residence of the prospective adoptive parents, marital status, criminal history, financial resources, and/or the addition of one or more children or other dependents to the family, the prospective adoptive parents must ensure that the home study is amended by a home study preparer to reflect any such changes. If the orphan's proposed State of residence has changed, the home study amendment must contain a recommendation in accordance with paragraph (e)(8) of this section, if required by State law. Any preadoption requirements of the new State must be complied with in the case of an orphan coming to the United States to be adopted.

(10) "Grandfather" provision for home study. A home study properly completed in conformance with the regulations in force prior to September 30, 1994, shall be considered acceptable if submitted to the Service within 90 days of September 30, 1994. Any such home study accepted under this "grandfather" provision must include screening in accordance with paragraphs (e)(2)(iii)(A) and (B) of this section. Additionally, any such home study submitted under this "grandfather" provision which is more than six months old at the time of its submission must be amended or updated pursuant to the requirements of paragraph (e)(9) of this section.

(f) State preadoption requirements.

(1) General. Many States have preadoption requirements which, under the Act, must be complied with in every case in which a child is coming to such a State as an orphan to be adopted in the United States.

(2) Child coming to be adopted in the United States. An orphan is coming to be adopted in the United States if he or she will not be or has not been adopted abroad, or if the unmarried petitioner or both the married petitioner and spouse did not or will not personally see the orphan prior to or during the adoption proceeding abroad, and/or if the adoption abroad will not be, or was not, full and final. If the prospective adoptive parents reside in a State with preadoption requirements and they plan to have the child come to the United States for adoption, they must submit evidence of compliance with the State's preadoption requirements to the Service.

Any preadoption requirements which by operation of State law cannot be met before filing the advanced processing application must be noted. Such requirements must be met prior to filing the petition, except for those which cannot be met by operation of State law until the orphan is physically in the United States. Those requirements which cannot be met until the orphan is physically present in the United States must be noted.

(3) Special circumstances. If both members of the prospective adoptive couple or the unmarried prospective adoptive parent intend to travel abroad to see the child prior to or during the adoption, the Act permits the application and/or petition, if otherwise approvable, to be approved without preadoption requirements having been met. However, if plans change and both members of the prospective adoptive couple or the unmarried prospective adoptive parent fail to see the child prior to or during the adoption, then preadoption requirements must be met before the immigrant visa can be issued, except for those preadoption requirements that cannot be met until the child is physically in the United States because of operation of State law.

(4) Evidence of compliance. In every case where compliance with preadoption requirements is required, the evidence of compliance must be in accordance with applicable State law, regulation, and procedure.

(g) Where to file.

(1) Where to file an advanced processing application. An advanced processing application must be filed with the Service as follows:

(i) Prospective adoptive parents residing in the United States. If the prospective adoptive parents reside in the United States, the application must be filed with the Service office having jurisdiction over their place of residence.

(ii) Prospective adoptive parents residing in Canada. If the prospective adoptive parents reside in Canada, the application must be filed with the stateside Service office having jurisdiction over the proposed place of residence of the prospective adoptive parents in the United States.

(iii) Prospective adoptive parents residing in a foreign country other than Canada. If the prospective adoptive parents reside outside of the United States or Canada, the application may be filed with the overseas Service office having jurisdiction over the current place of residence pursuant to Sec. 100.4(b) of this chapter, or with the stateside Service office having jurisdiction over the proposed place of residence of the prospective adoptive parents in the United States.

(2) Where to file an orphan petition when the advanced processing application has been approved. An orphan petition must be filed with the appropriate Service office or immigrant visa-issuing post of the Department of State as follows:

(i) Prospective adoptive parents residing in the United States who do not travel abroad to locate and/or adopt an orphan. If the prospective adoptive parents reside in the United States and do not travel abroad to locate and/or adopt an

orphan, the petition must be filed with the Service office having jurisdiction over the place of residence of the prospective adoptive parents.

(ii) Prospective adoptive parents residing in the United States, with one or both members of the prospective adoptive couple, or the unmarried prospective adoptive parent, traveling abroad to locate and/or adopt an orphan. If the prospective adoptive parents reside in the United States, and one or both members of the prospective adoptive couple, or the unmarried prospective adoptive parent, travel abroad to locate and/or adopt an orphan, the petition may be filed with the stateside Service office having jurisdiction over the place of residence of the prospective adoptive parents in the United States or at the overseas site. The petitioner may file the orphan petition at the overseas site only while he or she is physically present within the jurisdiction of the overseas site. If only one member of a married couple, which includes an alien, travels abroad to file the petition, it must be the United States citizen who travels abroad so that the overseas site will have jurisdiction over the petition.

(iii) Prospective adoptive parents residing outside the United States. Prospective adoptive parents residing outside of the United States may file the petition with the overseas site, or with the stateside Service office having jurisdiction over the proposed place of residence of the prospective adoptive parents in the United States.

(3) Where to file an orphan petition when the advanced processing application is pending. When the advanced processing application is pending, the petition must be filed at the Service office at which the application is pending.

(4) Where to file an orphan petition concurrently with the advanced processing application. When the petition is filed concurrently with the advanced processing application, it must be filed in accordance with the instructions for filing an advanced processing application in paragraphs (g)(1)(i) through (g)(1)(iii) of this section.

(h) Adjudication and decision.

(1) "Grandfather" provision for advanced processing application and/or orphan petition. All applications and petitions filed under prior regulations which are filed before and are still pending on September 30, 1994, shall be processed and adjudicated under the prior regulations.

(2) Director's responsibility to make an independent decision in an advanced processing application. No advanced processing application shall be approved unless the director is satisfied that proper care will be provided for the orphan. If the director has reason to believe that a favorable home study, or update, or both are based on an inadequate or erroneous evaluation of all the facts, he or she shall attempt to resolve the issue with the home study preparer, the agency making the recommendation pursuant to paragraph (e)(8) of this section, if any, and the prospective adoptive parents. If such consultations are unsatisfactory, the director may request a review and opinion from the appropriate State Government authorities.

(3) Advanced processing application approved. If the advanced processing application is approved, the prospective adoptive parents shall be advised in writing. The application and supporting documents shall be forwarded to the overseas site where the orphan resides. Additionally, if the petitioner advises the director that he or she intends to travel abroad to file the petition, telegraphic notification shall be sent overseas as detailed in paragraph (j)(1) of this section. The approved application shall be valid for eighteen months from its approval date. During this time, the prospective adoptive parents may file

an orphan petition for one orphan without fee. If approved in the home study for more than one orphan, the prospective adoptive parents may file a petition for each of the additional children, to the maximum number approved. If the orphans are siblings, no additional fee is required. If the orphans are not siblings, an additional fee is required for each orphan beyond the first orphan. Approval of an advanced processing application does not guarantee that the orphan petition will be approved.

(4) Advanced processing application denied for failure to disclose history of abuse and/or violence, or for failure to disclose a criminal history, or for failure to cooperate in checking child abuse registries. Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence, or a criminal history to the home study preparer and to the Service in accordance with paragraphs (e)(2)(iii)(A) and (B) and (e)(2)(v) of this section may result in the denial of the advanced processing application, or if applicable, the application and orphan petition filed concurrently. Failure by the prospective adoptive parents or an adult member of the prospective adoptive parents' household to cooperate in having available child abuse registries checked in accordance with paragraphs (e)(2)(iii)(A)(1) and (e)(2)(iii)(A)(1)(i) through (e)(2)(iii)(A)(1)(iii) of this section will result in the denial of the advanced processing application or, if applicable, the application and orphan petition filed concurrently. Any new application and/or petition filed within a year of such denial will also be denied.

(5) Advanced processing denied for failure to submit home study. If the home study is not submitted within one year of the filing date of the advanced processing application, the application shall be denied. This action shall be without prejudice to a new filing at any time with fee.

(6) Advanced processing application otherwise denied. If the director finds that the prospective adoptive parents have otherwise failed to establish eligibility, the applicable provisions of 8 CFR part 103 regarding a letter of intent to deny, if appropriate, and denial and notification of appeal rights shall govern.

(7) Advanced processing application deemed abandoned for failure to file orphan petition within eighteen months of application's approval date. If an orphan petition is not properly filed within eighteen months of the approval date of the advanced processing application, the application shall be deemed abandoned. Supporting documentation shall be returned to the prospective adoptive parents, except for documentation submitted by a third party which shall be returned to the third party, and documentation relating to the fingerprint checks. The director shall dispose of documentation relating to fingerprint checks in accordance with current policy. Such abandonment shall be without prejudice to a new filing at any time with fee.

(8) Orphan petition approved by a stateside Service office. If the orphan petition is approved by a stateside Service office, the prospective adoptive parents shall be advised in writing, telegraphic notification shall be sent to the immigrant visa-issuing post pursuant to paragraph (j)(3) of this section, and the petition and supporting documents shall be forwarded to the Department of State.

(9) Orphan petition approved by an overseas Service office. If the orphan petition is approved by an overseas Service office located in the country of the orphan's residence, the prospective adoptive parents shall be advised in writing, and the petition and supporting documents shall be forwarded to the immigrant visa-issuing post having jurisdiction for immigrant visa processing.

(10) Orphan petition approved at an immigrant visa-issuing post. If the orphan petition is approved at an immigrant visa-issuing post, the post shall initiate immigrant visa processing.

(11) Orphan petition found to be "not readily approvable" by a consular officer. If the consular officer adjudicating the orphan petition finds that it is "not readily approvable," he or she shall notify the prospective adoptive parents in his or her consular district and forward the petition, the supporting documents, the findings of the I-604 investigation conducted pursuant to paragraph (k)(1) of this section, and any other relating documentation to the overseas Service office having jurisdiction pursuant to Sec. 100.4(b) of this chapter.

(12) Orphan petition denied: petitioner fails to establish that the child is an orphan. If the director finds that the petitioner has failed to establish that the child is an orphan who is eligible for the benefits sought, the applicable provisions of 8 CFR part 103 regarding a letter of intent to deny and notification of appeal rights shall govern.

(13) Orphan petition denied: petitioner files orphan petition more than eighteen months after the approval of the advanced processing application. If the petitioner files the orphan petition more than eighteen months after the approval date of the advanced processing application, the petition shall be denied. This action shall be without prejudice to a new filing at any time with fee.

(14) Revocation. The approval of an advanced processing application or an orphan petition shall be automatically revoked in accordance with Sec. 205.1 of this chapter, if an applicable reason exists. The approval of an advanced processing application or an orphan petition shall be revoked if the director becomes aware of information that would have resulted in denial had it been known at the time of adjudication. Such a revocation or any other revocation on notice shall be made in accordance with Sec. 205.2 of this chapter.

(i) Child-buying as a ground for denial. An orphan petition must be denied under this section if the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings.

(j) Telegraphic notifications.

(1) Telegraphic notification of approval of advanced processing application. Unless conditions preclude normal telegraphic transmissions, whenever an advanced processing application is approved in the United States, the director shall send telegraphic notification of the approval to the overseas site if a prospective adoptive parent advises the director that the petitioner intends to travel abroad and file the orphan petition abroad.

(2) Requesting a change in visa-issuing posts. If a prospective adoptive parent is in the United States, he or she may request the director to transfer notification of the approved advanced processing application to another visa-issuing post. Such a request shall be made on Form I-824 (Application for Action on an Approved Application or Petition) with the appropriate fee. The director shall send a Visas 37 telegram to both the previously and the newly designated posts. The following shall be inserted after the last numbered standard entry. "To: [insert name of previously designated visa-issuing post or overseas Service office]. Pursuant to the petitioner's request, the Visas 37 cable previously sent to your post/office in this matter is hereby invalidated. The approval is being transferred to the other post/office addressed in this telegram. Please forward the approved advanced processing application to that destination." Prior to sending such a telegram, the director must ensure that the change in posts does not alter any conditions of the approval.

(3) Telegraphic notification of approval of an orphan petition. Unless conditions preclude normal telegraphic transmissions, whenever a petition is approved by a stateside Service office, the director shall send telegraphic notification of the approval to the immigrant visa-issuing post.

(k) Other considerations.

(1) I-604 investigations. An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. An I-604 investigation shall be completed before a petition is adjudicated abroad. When a petition is adjudicated by a stateside Service office, the I-604 investigation is normally completed after the case has been forwarded to visa-issuing post abroad. However, in a case where the director of a stateside Service office adjudicating the petition has articulable concerns that can only be resolved through the I-604 investigation, he or she shall request the investigation prior to adjudication. In any case in which there are significant differences between the facts presented in the approved advanced processing application and/or orphan petition and the facts uncovered by the I-604 investigation, the overseas site may consult directly with the appropriate Service office. In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.

(2) Authority of consular officers. An American consular officer is authorized to approve an orphan petition if the Service has made a favorable determination on the related advanced processing application, and the petitioner, who has traveled abroad to a country with no Service office in order to locate or adopt an orphan, has properly filed the petition, and the petition is approvable. A consular officer, however, shall refer any petition which is "not clearly approvable" for a decision by the Service office having jurisdiction pursuant to Sec.100.4(b) of this chapter. The consular officer's adjudication includes all aspects of eligibility for classification as an orphan under section 101(b)(1)(F) of the Act other than the issue of the ability of the prospective adoptive parents to furnish proper care to the orphan. However, if the consular officer has a well-founded and substantive reason to believe that the advanced processing approval was obtained on the basis of fraud or misrepresentation, or has knowledge of a change in material fact subsequent to the approval of the advanced processing application, he or she shall consult with the Service office having jurisdiction pursuant to Sec.100.4(b) of this chapter.

(3) Child in the United States. A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition when all the requirements of sections 101(b)(1)(F) and 204(d) and (e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition.

(4) Liaison. Each director shall develop and maintain liaison with State Government adoption authorities having jurisdiction within his or her jurisdiction, including the administrator(s) of the Interstate Compact on the Placement of Children, and with other parties with interest in international adoptions. Such parties include, but are not necessarily limited to, adoption agencies, organizations representing adoption agencies, organizations representing adoptive parents, and adoption attorneys.

Return to [top of page](#)

A. Sections of Law and Regulations Relating to Orphan Petitions

The following citations may be of interest to adoptive and prospective adoptive parent(s) who need more information on petitions for orphan and adopted children. These sections of law may also be of interest to adoption agencies, community-based organizations and attorneys who represent adoptive and prospective adoptive parents.

1. Sections of the Immigration and Nationality Act (the Act)

Section 101(b)(1)(E) [8 U.S. Code (U.S.C.) 1101(b)(1)(E)] - Adopted children (other than orphans).

Section 101(b)(1)(F) [8 U.S.C. 1101(b)(1)(F)] - Orphans.

Section 204(a), (b), (c) and (d) [8 U.S.C. 1154(a), (b), (c) and (d)] - Procedure for granting immigrant status.

Section 205 (8 U.S.C. 1155) - Revocation of approval of petitions; notice of revocation; effective date.

2. Sections of regulations in the Code Federal Regulations (CFR)

Title 8 CFR, Section 204.2 - Petitions for Relatives, widow and widowers, and abused spouses and children.

Title 8 CFR, Section 204.3 - Orphans.

Title 8 CFR, Section 205 - Revocation.

B. Glossary/Definitions

Definitions from the Immigration and Nationality Act Relating to Section 204(c)

Adopted Child is defined in section 101(b)(1)(E) of the Act as "a child adopted while under the age of sixteen years who has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter."

Public Law 106-139, signed by the President on December 7, 1999, amended section 101(b)(1)(E) of the Act to add that a child who is a natural sibling of an adopted child described above, and who was adopted by the adoptive parent or parents of the sibling while the child was under the age of eighteen, is also a "child" as defined by the Act. The child must otherwise fall under the definition

of a child under paragraph (E) except that the child was adopted while under the age of eighteen.

Orphan is defined in section 101(b)(1)(F) of the Act as “a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child’s proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.”

Public Law 106-139, signed by the President on December 7, 1999, amended section 101(b)(1)(F) of the Act to include the natural sibling of a previously adopted child, when the sibling has been adopted abroad or is coming to the United States for adoption by the same United States citizen parent(s) or prospective parent(s), if the child is under the age of 18 when the petition to accord a classification as an immediate relative under section 201(b) of the Act is filed on his or her behalf.

Return to [top of page](#)

Title 8 CFR 204.2 Definitions

Legal custody as defined in 8 CFR 204.2(d)(2)(vii)(A) means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized government entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

Resided with information can be found in 8 CFR 204.2(d)(2)(vii)(B). This section of the regulations says evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support

and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as the natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.

Title 8 CFR 204.3(b) Definitions

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in a orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

Adult member of the prospective adoptive parents' household means an individual, other than the prospective adoptive parent, over the age of 18, whose principal or only residence is the home of the prospective adoptive parents. This definition excludes any child of the prospective adoptive parents, whose principal or only residence is the home of the prospective adoptive parents, who reaches his or her 18th birthday after the prospective adoptive parents have filed the advance processing application (or the advance processing application concurrently with the orphan petition) unless the INS director has an articulable and substantive reason for requiring an evaluation by a home study preparer and/or a fingerprint check.

Advance processing application means Form I-600A, Application for Advance Processing of Orphan Petition, completed in accordance with the form's instructions and submitted with the required supporting documentation and fee as required in 8 CFR 103.7(b)(1). The application must be signed in accordance with the form's instructions by the married petitioner and spouse, or by the unmarried petitioner.

Application is synonymous with advance processing application.

Competent authority means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in

matters of child welfare, including adoption.

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Foreign-sending country means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

Home study preparer means any party licensed or otherwise authorized under the law of the state of the orphan's proposed residence to conduct the research and preparation for a home study, including the required personal interview(s). This term includes a public agency with authority under that state's law in adoption matters, public or private adoption agencies licensed or otherwise authorized by the laws of that state to place children for adoption, and organizations or individuals licensed or otherwise authorized to conduct the research and preparation for a home study, including the required personal interview(s), under the laws of the state of the orphan's proposed residence. In the case of an orphan whose adoption has been finalized abroad and whose adoptive parents reside abroad, the home study preparer includes any party licensed or otherwise authorized to conduct home studies under the law of any state of the United States, or any party licensed or otherwise authorized by the foreign country's adoption authorities to conduct home studies under the laws of the foreign country.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign-sending country.

Orphan petition means Form I-600, Petition to Classify Orphan as an Immediate Relative. The petition must be completed in accordance with the form's instructions and submitted with the required supporting documents and, if there is not an advance processing application approved within the previous 18 months or pending, the fee as required in 8 CFR 103.7(b)(1). The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

Overseas site means the Department of State immigrant visa-issuing post having jurisdiction over the orphan's residence, or in foreign countries in which

INS has an office or offices, with the INS office having jurisdiction over the orphan's residence.

Petition is synonymous with orphan petition.

Petitioner means a married U.S. citizen of any age, or an unmarried U.S. citizen who is at least 24 years old at the time he or she files the advance processing application and at least 25 years old at the time he or she files the orphan petition. In the case of a married couple, both of whom are U.S. citizens, either party may be the petitioner.

Prospective adoptive parents means a married U.S. citizen of any age and his or her spouse of any age, or an unmarried U.S. citizen who is at least 24 years old at the time he or she files the advance processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the U.S. citizen may be a citizen or an alien. An alien spouse must be in lawful status if residing in the United States.

Separation from both parents means the involuntary severance of the child from his or her parent by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the INA. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in the section of law.

Return to [top of page](#)

C. Forms Used in Orphan Cases

Form I-171 -- Notice of Approval of Relative Immigrant Visa Petition (sent to petitioning parent when the I-600 orphan petition is approved).

Form I-171H -- Notice of Favorable Determination Concerning Applications for Advance Processing of Orphan Petition.

Form I-600 -- Petition to Classify Orphan as an Immediate Relative.

Form I-600A -- Application for Advance Processing of Orphan Petition.

Form I-604 -- Request for and Report on Overseas Orphan Investigation (internal form used by INS and consular officers).

Form I-797 -- Notice of Action. In some INS offices, this form is used instead of the I-171 and I-171H.

Form FD-258 -- Applicant Fingerprint Card. Used to obtain fingerprints of the

adoptive or prospective adoptive parent(s) and each adult member of the adoptive or prospective adoptive parents' household.

Other Forms Used

Form I-130 -- Petition for Alien Relative

Form I-485 -- Application to Register Permanent Residence or Adjust Status

Form I-765 -- Application for Employment Authorization

Form I-864 -- Affidavit of Support Under Section 213A of the Act

Form N-400 -- Application for Naturalization

Form N-600 -- Application for Certificate of Citizenship

Form N-600A -- Supplement to the N-600 or N-643. This form is used by the citizen parent to document the physical presence of his or her citizen parent -- the child's grandparent-- in the United States.

Form N-643 -- Application for Certificate of Citizenship on Behalf of an Adopted Child

INS forms may be obtained by calling the INS Forms Line at 1-800-870-FORM (3676).

Return to [top of page](#)

D. Links to Useful Websites:

<http://travel.state.gov/adopt.html> U.S. Department of State Office of Children's Issues: The Office of Children's Issues formulates, develops and coordinates policies and programs and provides direction to foreign service posts on international parental child abduction and international adoption

http://www.travel.state.gov/travel_warnings.html U.S. Department of State Travel Warnings. Information provided by the U.S. Department of State regarding social and political conditions in other countries.

<http://www.calib.com/naic/> National Adoption Information Clearinghouse: The National Adoption Information Clearinghouse is a comprehensive resource on all aspects of adoption, is a service of the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

Educational sites:

<http://www.law.cornell.edu/topics/adoption.html> Cornell University Law School On-line library on Adoption law.

Organization sites:

<http://www.adoptionattorneys.org/> AAAA. The American Academy of Adoption Attorneys is a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of adoption law.

<http://www.adoptioninstitute.org/> The Evan B. Donaldson Adoption Institute The Evan B. Donaldson Adoption Institute is committed to providing reliable, quality information that can inform policy and practice development and can elevate the debate on the more controversial issues in adoption to a fully informed level.

<http://www.jcics.org/> JCICS: The Joint Council on International Children's Services from North America (JCICS) is the oldest and largest affiliation of licensed, nonprofit international adoption agencies in the world.

<http://www.nacac.org/> NACAC: Founded in 1974 by adoptive parents, the North American Council on Adoptable Children is committed to meeting the needs of waiting children and the families who adopt them.

<http://www.ncfa-usa.org/home.html> NCFA: The National Council For Adoption is a 501(c)(3) charity that has one goal in mind - To help as many children as possible find permanent homes through adoption.

Return to [top of page](#)

Sections of the Immigration and Nationality Act (the Act)

Section 101(b)(1)(E) [8 U.S. Code (U.S.C.) 1101(b)(1)(E)] - Adopted children (other than orphans).

(b) As used in titles I and II-

(1) The term "child" means an unmarried person under twenty-one years of age who is-

.....

- (E) (i) 17a/ a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or
- (ii) 17a/ subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; 17aa/

Section 101(b)(1)(F) [8 U.S.C. 1101(b)(1)(F)] - Orphans.

(F) (i) 17a/ a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

.....

Section 204(a), (b), (c) and (d) [8 U.S.C. 1154(a), (b), (c) and (d)] -

Procedure for granting immigrant visas.

Sec. 204. [8 U.S.C. 1154]

(a)(1)(A)(i) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

....

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3), the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

(d) (1) 1/ Notwithstanding the provisions of subsections (a) and (b) no petition may be approved on behalf of a child defined in section subparagraph (F) or (G) of section 101(b)(1) 1/ unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

(2) 1/ Notwithstanding the provisions of subsections (a) and (b), no petition may be approved on behalf of a child defined in section 101(b)(1)(G) unless the Secretary of State has certified that the central authority of the child's country of origin has notified the United States central authority under the convention referred to in such section 101(b)(1)(G) that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted the United States as an immigrant under

subsection (a), (b), or (c) of section 203 or as an immediate relative under section 201(b) if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

(f)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(3), as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

INA: ACT 205 - REVOCATION OR APPROVAL OF PETITIONS

Sec. 205. [8 U.S.C. 1155] The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition. In no case, however, shall such revocation have effect unless there is mailed to the petitioner's last known address a notice of the revocation and unless notice of the revocation is communicated through the Secretary of State to the beneficiary of the petition before such beneficiary commences his journey to the United States. If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility shall be determined in the manner provided for by sections 235 and 240.

Return to [top of page](#)

Sections of regulations in the Code Federal Regulations (CFR)

Title 8 CFR, Section 204.2 - Petitions for Relatives, widow and widowers, and abused spouses and children.

Sec. 204.2 Petitions for relatives, widows and widowers, and abused spouses and children. (Amended 3/26/96; 61 FR 13061)

(a) Petition for a spouse.

...

(b) Petition by widow or widower of a United States citizen.

.....

(c) Self-petition by spouse of abusive citizen or lawful permanent resident.

....

(d) Petition for a child or son or daughter.

(1) Eligibility. A United States citizen may file a petition on behalf of an unmarried child under twenty-one years of age for immediate relative classification under section 201(b) of the Act. A United States citizen may file a petition on behalf of an unmarried son or daughter over twenty-one years of age under section 203(a)(1) or for a married son or daughter for preference classification under section 203(a)(3) of the Act. An alien lawfully admitted for permanent residence may file a petition on behalf of a child or an unmarried son or daughter for preference classification under section 203(a)(2) of the Act. (Redesignated as paragraph (d) 3/26/96; 61 FR 13061; previously paragraph (c))

(2) Evidence to support petition for child or son or daughter. In addition to evidence of United States citizenship or lawful permanent residence, the petitioner must also provide evidence of the claimed relationship.

(i) Primary evidence for a legitimate child or son or daughter.

(ii) Primary evidence for a legitimated child or son or daughter.

(iii) Primary evidence for an illegitimate child or son or daughter.....

(iv) Primary evidence for a stepchild.....

(v) Secondary evidence.....

(vi) Blood tests.

(vii) Primary evidence for an adopted child or son or daughter. A petition may be submitted on behalf of an adopted child or son or daughter by a United States

citizen or lawful permanent resident if the adoption took place before the beneficiary's sixteenth birthday, and if the child has been in the legal custody of the adopting parent or parents and has resided with the adopting parent or parents for at least two years. A copy of the adoption decree, issued by the civil authorities, must accompany the petition.

(A) "Legal custody" means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

(B) Evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as the natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.

(C) Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody, like residence, is accounted for in the aggregate. Therefore, a break in legal custody or residence will not affect the time already fulfilled. To meet the definition of child contained in sections 101(b)(1)(E) and 101(b)(2) of the Act, the child must have been under 16 years of age when the adoption is finalized.

(3) Decision on and disposition of petition. The approved petition will be forwarded to the Department of State's Processing Center. If the beneficiary is in the United States and is eligible for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the petition is denied, the petitioner will be notified of the reasons for the denial and of the right to appeal in accordance with the provisions of 8 CFR 3.3.

(4) Derivative beneficiaries. A spouse or child accompanying or following to join a principal alien as used in this section may be accorded the same preference and priority date as the principal alien without the necessity of a separate petition. However, a child of an alien who is approved for classification as an immediate relative is not eligible for derivative classification and must have a separate petition approved on his or her behalf.

(5) Name change. When the petitioner's name does not appear on the child's birth certificate, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the petition. If the beneficiary's name has been legally changed, evidence of the name change must also accompany the petition.

(e) Self-petition by child of abusive citizen or lawful permanent resident.

(f) Petition for a parent. ...

(g) Petition for a brother or sister. ...

(h) Validity of approved petitions.

(1) General. Unless terminated pursuant to section 203(g) of the Act or revoked pursuant to Part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of section 203 of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner and of the petitioner's status as established in the petition. (Redesignated as paragraph (h), previously paragraph (g); 3/26/96; 61 FR 13061)

(2) Subsequent petition by same petitioner for same beneficiary. When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification on behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, except when the original petition has been terminated pursuant to section 203(g) of the Act or revoked pursuant to Part 205 of this chapter, or when an immigrant visa has been issued to the beneficiary as a result of the petition approval. A self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive citizen or lawful permanent resident of the United States will not be regarded as a reaffirmation or reinstatement of a petition previously filed by the abuser. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition's priority date to the self-petition. The visa petition's priority date may be assigned to the self-petition without regard to the current validity of the visa petition. The burden of proof to establish the existence of and the filing date of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer. A new self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act will not be regarded as a reaffirmation or reinstatement of the original self-petition unless the prior and the subsequent self-petitions are based on the relationship to the same abusive citizen or lawful permanent resident of the United States. (Amended 3/26/96; 61 FR 13061)

(i) Automatic conversion of preference classification. ...

Return to [top of page](#)